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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ANTRANIK KEVORKIAN,

Plaintiff and Appellant,

v.

LISA ANN HASTINGS,

Defendant and Respondent.

B286203

(Los Angeles County  
Super. Ct. No. BC626405)

APPEAL from an order of the Superior Court of Los Angeles County, Donna Fields Goldstein, Judge. Affirmed.

Antranik Kevorkian, in pro. per., for Plaintiff and Appellant.

The Jamison Law Firm and Guy E. Jamison, for Defendant and Respondent Lisa Hastings.

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Plaintiff and appellant Antranik Kevorkian (Kevorkian), in propria persona, appeals an order denying his motion under Code of Civil Procedure section 473 to set aside his voluntary dismissal of his action against defendant and respondent Lisa Ann Hastings (Hastings).<sup>1</sup>

We affirm the order, concluding the trial court acted within its discretion in finding that Kevorkian's voluntary dismissal of his lawsuit was not due to mistake, inadvertence, surprise, or excusable neglect. (§ 473, subd. (b).)

### **FACTUAL AND PROCEDURAL BACKGROUND**

1. *Events leading up to Kevorkian's dismissal of his lawsuit against Hastings.*

On July 8, 2016, Kevorkian filed this action against Hastings, alleging she attacked him with pepper spray and assaulted him when he went to serve her with court papers for an upcoming court hearing in another matter. A first amended complaint followed.

Hastings, in turn, filed a cross-complaint against Kevorkian. Hastings alleged causes of action for intentional infliction of emotional distress and trespass, and sought damages as well as injunctive relief.

Discovery disputes followed. On March 14, 2017, the trial court entered an order granting a motion by Hastings to compel Kevorkian's attendance at deposition, and directing Kevorkian to pay \$1,810 in monetary sanctions to Hastings's counsel.

On May 30, 2017, Hastings's counsel obtained a writ of execution to enforce the \$1,810 sanctions award, but did not enforce the order at that time.

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<sup>1</sup> All unspecified statutory references are to the Code of Civil Procedure.

On June 23, 2017, the trial court entered another discovery order, denying a motion by Kevorkian to compel further responses to his requests for production, and awarding another \$2,000 in monetary sanctions to Hastings for Kevorkian's meritless motion. The trial court also ruled that Kevorkian's failure to pay the \$1,810 in monetary sanctions that previously had been imposed did not entitle Hastings to terminating sanctions, but that Hastings was entitled to execute immediately on the \$1,810 sanctions award.

On August 2, 2017, the sheriff enforced the writ of execution by seizing a Dodge van owned by Kevorkian for the purpose of selling it to satisfy the unpaid sanctions award. Kevorkian then went to the office of Hastings's attorney in an attempt to obtain release of the van. According to Kevorkian, he needed the van back immediately for "medical reasons."

Later that day, the parties entered into a settlement agreement and mutual release, which provided, inter alia, that Hastings agreed to forgo enforcement of all monetary sanctions, and that the parties would dismiss with prejudice their respective complaints against one another.

On August 3, 2017, Kevorkian dismissed with prejudice his action against Hastings, and she likewise dismissed with prejudice her cross-complaint against Kevorkian.

2. *Kevorkian's motion under section 473 to be relieved of his voluntary dismissal of the lawsuit.*

a. *Kevorkian's motion.*

On September 25, 2017, Kevorkian filed the motion which is the subject of this appeal. Kevorkian moved under section 473, subdivision (b), to set aside his voluntary dismissal of his action against Hastings, claiming that he dismissed the lawsuit due to mistake and surprise.

Kevorkian's supporting declaration stated: When he went to the office of Hastings's attorney on the afternoon of August 2, 2017, her counsel stated he would refuse to release the van unless Kevorkian paid the full amount of \$1,810. Kevorkian offered to make monthly payments, but counsel refused. Counsel then stated that "your other option is to drop the case" and then the van would be released. Kevorkian was "taken by surprise" on August 2, 2017, when the van was towed away, he needed the van for medical reasons, and thus he signed the settlement agreement and the request for dismissal.

b. *Hastings's opposition papers.*

In opposition, Hastings argued the voluntary dismissal by Kevorkian was not the result of mistake, inadvertence, surprise, or excusable neglect. Rather, Kevorkian willingly entered into the settlement agreement and voluntary dismissal "as a scheme to prevent his car from being levied upon."

Hastings noted that Kevorkian's moving declaration stated that he entered into the settlement agreement after he failed to convince her attorney to release the van in exchange for monthly payments of 50 or 75 dollars. The signing of the settlement agreement and dismissal "was quite intentional, something bargained for in exchange for [Hastings] agreeing" to release the

van and waiver of her right to collect the sanctions that she had been awarded.

Hastings's opposition papers also requested \$1,575 in attorney fees pursuant to an attorney fee provision in the settlement agreement entitling the prevailing party to recover attorney fees in a proceeding to enforce the settlement agreement.

Hastings's opposition papers were supported by the declaration of Hastings's attorney, who stated: After the sheriff seized Kevorkian's vehicle, he came to counsel's office to obtain release of the van. Kevorkian threatened to file a claim of exemption and challenge the enforcement proceedings. Counsel cautioned Kevorkian that because he owned more than one vehicle, his claim for exemption might not be successful. Kevorkian left the office to consider his options and then returned, stating he wanted to resolve the entire dispute and agreed to dismiss his complaint with prejudice if Hastings were to waive her right to collect the unpaid sanctions.

*c. Trial court's ruling denying Kevorkian's motion for relief under section 473.*

On November 3, 2017, after hearing the matter, the trial court ruled as follows:

"The Plaintiff offers facts in his declaration to demonstrate that he dismissed the action with prejudice based on a settlement agreement. The Plaintiff states that after monetary sanctions were imposed on him, he was surprised when his van was towed away and that he entered into the settlement and dismissed this action because he wanted to recover his van.

"A review of the Court file reveals that the Court imposed discovery sanctions in the form of monetary sanctions on the

Plaintiff . . . under . . . section 2025.450 because the Plaintiff had failed to comply with discovery. Under California law, orders that impose monetary sanctions are enforced through the execution of judgment laws. [Citation.] Orders imposing monetary sanctions have the force and effect of a money judgment, and are immediately enforceable through execution. [Citation.]

“[Hastings’s] attorney, Guy Jamison, states in paragraph 5 of his declaration, which accompanies the opposition papers, that he enforced the order imposing monetary sanctions by obtaining a writ of execution and then instructing the Sheriff to levy on [Kevorkian’s] motor vehicles in order to satisfy the unpaid sanctions award. Mr. Jamison states facts in paragraphs 7 to 10 that demonstrate that after the Sheriffs took possession of the Plaintiff’s automobile, the Plaintiff offered to dismiss his action in return for [Hastings] waiving her right to collect the unpaid sanctions. . . . [T]he evidence . . . demonstrates that 1) the Plaintiff’s vehicle was towed as a result of his misuse of discovery and his failure to pay the Court-ordered monetary sanctions and that 2) the Plaintiff entered into a settlement agreement in which he agreed to dismiss the action in return for the Defendant waiving her right to collect the unpaid monetary sanction.

“This evidence demonstrates that there was no actual ‘surprise’ to [Kevorkian] because his van was towed as the result of [his] failure to pay the Court-ordered monetary sanctions. It is not reasonable for a party to be surprised by the enforcement of a Court order or judgment that the party failed to obey.

“Further, there is no evidence that the Plaintiff voluntarily dismissed the case due to mistake, inadvertence, or excusable neglect. Instead, the Plaintiff entered into a settlement

agreement in which he agreed to dismiss the action in return for the Defendant waiving her right to collect the unpaid monetary sanctions. The Plaintiff offers no facts to demonstrate that he mistakenly, inadvertently, or neglectfully dismissed the action. On the contrary, the Plaintiff voluntarily dismissed the action as part of a settlement agreement that he admits he entered [into] in order to recover his motor vehicle, i.e., he dismissed the case in return for the Defendant waiving her right to levy his motor vehicle to recover the unpaid monetary sanctions.

“Therefore, the Court denies the Plaintiff's motion for relief from his voluntary dismissal of the action because the Plaintiff has not demonstrated that he voluntarily dismissed the action due to any surprise, mistake, inadvertence, or excusable neglect.”

The trial court also awarded Hastings \$1,575 in attorney fees pursuant to the provision in the settlement agreement entitling the prevailing party to recover fees and costs in an action to enforce the settlement agreement.

Kevorkian filed a timely notice of appeal from the November 3, 2017 order.

### **CONTENTIONS**

Kevorkian contends the trial court abused its discretion in denying relief under both the discretionary and mandatory relief provisions of section 473, subdivision (b).

### **DISCUSSION**

#### *1. Appealability.*

A threshold issue is the appealability of the November 3, 2017 order denying Kevorkian's motion for relief under section 473.

We note that Kevorkian's voluntary dismissal of his action with prejudice was not, in and of itself, a barrier to relief.

“California courts have long held that ‘[e]ven after a voluntary dismissal with prejudice has been filed, the trial court *has jurisdiction* to vacate the judgment of dismissal under . . . section 473 where it has been entered as a result of the plaintiff’s “mistake, inadvertence, surprise, or excusable neglect.”’ [Citation.]” (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 254–255 (*Zamora*).) Upon a proper showing, parties “may obtain relief from judgments, dismissals, or stipulations voluntarily entered into pursuant to a voluntary agreement through the discretionary relief provision of section 473.” (*Id.* at p. 255.)

Thus, the trial court had jurisdiction under section 473 to determine whether to vacate Kevorkian’s voluntary dismissal. (*Zamora, supra*, 28 Cal.4th at pp. 254–255; *Basinger v. Roger & Wells* (1990) 220 Cal.App.3d 16, 21.) Thereafter, this court has jurisdiction to determine whether the trial court’s ruling on the motion for relief under section 473 was proper. (*Zamora, supra*, at p. 257.)

Accordingly, the order denying Kevorkian’s motion to be relieved of his voluntary dismissal is appealable, in accordance with the rule that an order denying relief under section 473 from a judgment is appealable as a postjudgment order. (§ 904.1, subd. (a)(2); *Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 927, fn. 6; see generally, 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 200, p. 276.)

*2. No abuse of discretion in denial of relief under the discretionary relief provision of section 473, subdivision (b).*

Kevorkian contends that the trial court erred in denying discretionary relief pursuant to section 473, subdivision (b). As relevant here, the statute provides that “[t]he court may, upon



any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (*Ibid.*)

A ruling “on a motion for discretionary relief under section 473 shall not be disturbed on appeal absent a clear showing of abuse. [Citations.] As the Supreme Court explained in *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598: ‘Although precise definition is difficult, it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.] We have said that when two or more inferences can reasonably be deduced from the facts, a reviewing court lacks power to substitute its deductions for those of the trial court.’ [Citation.]” (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.)

Here, the record supports the trial court’s ruling that Kevorkian’s voluntary dismissal of his lawsuit against Hastings was *not* the product of mistake, inadvertence, surprise, or excusable neglect. The record reflects that Kevorkian negotiated the dismissal of his lawsuit in exchange for Hastings’s waiver of her right to collect the unpaid sanctions, so that he could recover his van.

Kevorkian’s assertion that he “was taken by surprise” on August 2, 2017, when his van was towed away, does not meet the issue. Kevorkian’s statement in his moving declaration that he was surprised by the seizing of the van does not establish that his voluntary dismissal of the lawsuit was due to surprise. What the declaration does show is that Kevorkian’s motivation for dismissing his lawsuit was to recover his van. Specifically, after

Hastings's counsel declined Kevorkian's proposal to pay 50 or 75 dollars per month to satisfy the \$1,810 sanctions award, Kevorkian agreed to dismiss his lawsuit in order to recover his vehicle. Under these circumstances, the trial court properly found that Kevorkian's voluntary dismissal of his lawsuit was the product of negotiations, in which Kevorkian "agreed to dismiss the action in return for [Hastings] waiving her right to collect the unpaid monetary sanctions."

We conclude that on this record, the trial court acted within its discretion in finding that Kevorkian's voluntary dismissal of his action against Hastings was not due to mistake, inadvertence, surprise, or excusable neglect. (§ 473, subd. (b).)

3. *Kevorkian, as a self-represented litigant, could not obtain relief under the mandatory relief provision of section 473, subdivision (b), based on an attorney's affidavit of fault.*

Alternatively, Kevorkian contends he was entitled to relief under the mandatory relief provision of section 473, subdivision (b).<sup>2</sup>

That provision states "the court *shall*, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an *attorney's sworn affidavit* attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact

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<sup>2</sup> It does not appear from the moving papers below that Kevorkian requested relief pursuant to the mandatory provision of section 473, subdivision (b).

caused by the attorney’s mistake, inadvertence, surprise, or neglect.” (§ 473, subd. (b), italics added.)

The statute’s “mandatory relief provision has three purposes: (1) ‘to relieve the innocent client of the consequences of the attorney’s fault’ [citations]; (2) ‘to place the burden on counsel’ [citation]; and (3) ‘to discourage additional litigation in the form of malpractice actions by the defaulted client against the errant attorney’ [citation]. [¶] These purposes are advanced as long as mandatory relief is confined to situations in which the attorney, rather than the client, is the cause of the default, default judgment, or dismissal. [Citations.]” (*Martin Potts & Associates, Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 439.)

Kevorkian seems to take the position that because he acted as his own attorney, he is entitled to mandatory relief under section 473, subdivision (b). However, Kevorkian was self-represented below (as he is on appeal), and therefore he did not “‘lose [his] day in court due solely to an inexcusable failure to act on the part of [his] attorneys.’” (*Zamora, supra*, 28 Cal.4th at p. 257, italics omitted.) Further, mandatory relief under the statute requires an attorney’s affidavit of fault attesting that counsel, rather than the client, was responsible for the dismissal of the action. (§ 473, subd. (b).) As a litigant in propria persona, Kevorkian’s motion for relief was not, and could not have been, supported by an affidavit of fault from counsel.

In sum, the mandatory relief provision of section 473, subdivision (b), has no application to the case.

### **DISPOSITION**

The November 3, 2017 order denying Kevorkian's motion for relief under section 473, subdivision (b), is affirmed. Hastings shall recover her costs on appeal, as well as reasonable attorney fees pursuant to section 14 of the settlement agreement.

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EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.